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EXAMINER	
STERRETT, JONATHAN G	

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/836,862	FIELD, ET. AL.	
	Examiner	Art Unit	
	Jonathan G. Sterrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 April 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Summary

1. Claims 1-13 and 15-34 are pending in the application.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 9 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 9 claims a second level firm that is larger than a founding or foundation firm. Claim 11 claims a third level firm that is larger than a second level firm. It is not clear from the specification how a larger firm would accept participation in a business alliance where the firms above it are smaller in size. While the motivation to form an alliance for the purpose of pooling resources and gaining benefits associated with economies of scale through maintaining some joint interdependency while maintaining a firm's own independence is clear, the willingness of a firm to be included in such an alliance where a superior firm is smaller in size and liable for a greater revenue sharing proportion due to the smaller firm's superior position in the alliance is not clear. The specification notes on page 10 line 5-6 "Each second level firm generally is smaller than the signing firm, i.e., the foundation firms or founding

firm." The specification also notes on page 10 line 8-9, "Each third level firm is generally smaller than the signing second level firm." The specification notes that the larger firm may be classified by the founding firm as a second level firm, but would be classified as a third level firm for purposes of revenue sharing. Further clarification and/or examples are required to establish motivation as to why a firm would join the alliance as such, when the current art in organizational structure suggests otherwise.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-13 and 15-34 are rejected under 35 U.S.C. 101 because the invention is directed to non-statuatory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts: and

(2) whether the invention produces a useful, concrete and tangible result.

4. For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance

the technological arts. In the present case, none of the claims are directed to anything in the technological arts as explained above. Looking at the claims as a whole, nothing in the body of the claims recites any structure or functionality to suggest that a technology performs the recited steps. Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention provides a method for creating a multi-level business alliance to share resources and revenue; which is a useful, concrete and tangible result. Because the recited process produces a useful, concrete and tangible result but since the claimed invention, as a whole, is not within the technological arts as explained above, Claims 1-13 and 15-34 are directed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8, 10, 12, 13, 15-17, 19, 20, 23-28 and 30-34 are rejected under 35 U.S.C. 102(b) as being anticipated by the concept of Keiretsu as discussed by the following documents:

Miyashita, Kenichi; Russell, David; "Inside the Hidden Japanese Conglomerates", 1994, McGraw-Hill, pp.1-59, 115-131, hereafter known as Reference A.

Burt, David, "The American Keiretsu: a strategic weapon for global competitiveness", McGraw-Hill. pp.1-5, 37-61, hereafter known as Reference B.

Johnson, Hazel, "The Banking Keiretsu", 1993, Probus Publishing Company, pp. 147-183, hereafter known as Reference C.

Warner, Melanie, "Inside the Silicon Valley money machine", October 26, 1998, Fortune, v138n8, pp. 1-14, hereafter known as Reference D.

Webarchive.org, KPCB.com, "Keiretsu", p1, hereafter known as Reference E.

Labich, Ken, "NBA's David Stern: Still a gamer", October 30, 1995, Fortune, v132n9, pp. 1-6, hereafter known as Reference F.

Nelms, Douglas W, "Battling Giants", June 1994, Air Transport World, v31n6, pp. 1-8, hereafter known as Reference G

Regarding Claim 1, Keiretsu discloses:

creating an alliance between a founding firm and at least one firm in a first level (Reference C page 42 Figure 1 - founding firm at top of hierarchical pyramid; Reference A page 115 line 6-7 each pyramid or vertical keiretsu descends from a single powerful company) based on predefined rules (Reference A page 48 line 1-3, rules include doing business predominantly with other members in the same group; Reference A page 48 line 8-10, the bank may require a group member to establish accounts at one of its branches - these rules apply to all companies joining the Keiretsu; Reference A page 118 paragraph 1 line 3-5, production keiretsu rigidly ties all member companies to a single

manufacturer through predefined rules; Reference C page 41 paragraph 1 line 4-5, pyramid structure developed through formalized strategic selection);

allowing the founding firm and the firm in the first level to use predefined rules to sign up at least one firm in a second level (Reference C page 42 Figure 2-1, second level consists of primary subcontractors);

allowing the firm in the second level to use predefined rules to sign up at least one firm in a third level (Reference C page 42 Figure 2-1, secondary suppliers comprise a third level);

providing each firm in the multi-level business alliance the opportunity to access to the resources of other firms in the alliance (Reference A page 48 line 5-7, firms in Keiretsu have access to loans from bank; Reference A page 55 paragraph 4 line 1-4, shosha provides intermediary between bank and smaller firms to provide credit and act as clearing house);

enabling firms in the multi-level business alliance to share revenue based on predefined rules (Reference A page 47 paragraph 3 line 7-8, firm can sell up to 5% of it's stock to hosting bank; Reference D page 8 paragraph 1 line 8-10 & 14-15, keiretsu companies practice revenue sharing; Reference F page 2 paragraph 3 line 1, NBA has a Keiretsu; Reference F page 2 paragraph 1 line 5 – paragraph 2 line 12, revenue sharing in the NBA); and

accepting firms in the multi-level business alliance that potentially provide a service that is desirable to alliance members (Reference A page 123 paragraph 1 line 14-15, in a distribution Keiretsu, the owner supplies the retail space and labor under which to market primarily products from the keiretsu).

Regarding Claim 2, Keiretsu discloses the step of enabling firms of the multi-level business alliance to share revenue based on each firm's position in the multi-level alliance and based on relationships between the firm whose client is being served and other firms that are in higher levels of the multi-level business alliance (Reference C page 53 paragraph 2 line 6-10, agreements regarding revenues and profits relating to production process improvements impacting quality and cost; Reference C page 52 paragraph 2 line 4-5, continuous improvement in cost and quality is a requirement in this relationship).

Regarding Claim 3, Keiretsu discloses defining the firm in the first level as a foundation firm (Reference A page 37 paragraph 4 line 9-10, one foundation firm in the postwar Japan Keiretsu was Mitsubishi Shoji).

Regarding Claim 4, Keiretsu discloses requiring that the foundation firm is not in the same geographical area as founding firm (Reference B page 169 paragraph 4 line 1-2 - page 170 paragraph 1 line 1-2 & 5-7, Toyota, a founding Keiretsu firm in Japan, established a foundation firm in the US.). The examiner takes official notice that it is old and well known in the art that the related foundation firm in the US is known as Toyota Motor Manufacturing North America or TMMNA, whose headquarters are in Erlanger, Kentucky.

Regarding Claim 5, Keiretsu discloses allowing the foundation firm to be a predetermined size (Reference B page 170 paragraph 2 line 1-2, the Toyota firm in Erlanger is a predetermined size).

Regarding Claim 6, Keiretsu discloses allowing the size of each foundation firm to vary from one geographical area to a next geographical area

depending on the size of the founding firm in the same geographical area (Reference B page 170 paragraph 2 line 5-12, Trinity Industrial Corporation, Kentucky Franklin Precision Industry, and Central Light Alloy Company are all foundation firms that vary from one geographical area to a next geographical area. Their size is directly related to the size of Toyota's operation in Georgetown since they provide components to Georgetown)

Regarding Claim 7, Keiretsu discloses allowing multiple foundation firms in the same geographical area (The firms discussed in Claim 6 are multiple foundation firms in the state of Kentucky).

Regarding Claim 8, Keiretsu discloses allowing the second level firm to be in the same geographical area as the founding firm or the foundation firm and wherein the second level firm is smaller than the founding firm and the foundation firm (The firms discussed in Claim 6 are smaller than Toyota Japan and Toyota Georgetown).

Regarding Claim 10, Keiretsu discloses allowing the third level firm to be in the same geographical area as the second level firm that introduces the third level firm to the alliance, and wherein the third level firm is smaller than the signing second level firm (Reference C page 42 Figure 2-1, Tertiary subcontractors in Keiretsu structure are third level firms, Reference A page 12 paragraph 3 line 2-6, the smallest companies are at the bottom of the Keiretsu, both second and third level firms are located in Japan).

Regarding Claim 12, Keiretsu discloses using predefined criteria to

determine each firm's levels in the alliance structure (Reference C page 42 figure 2-1, primary subcontractors and secondary suppliers have positions determined by predefined criteria to determine each firm's levels in the alliance structure, including size of the firm and scope of work that they perform).

Regarding Claim 13, Keiretsu discloses using laws, in each jurisdiction where there is an alliance firm, to determine how revenue is shared among the alliance firms (Reference A page 47 paragraph 3 line 8-9, Keiretsu banks are prohibited by law from holding more than 5% of any commercial firm).

Regarding Claim 15, Keiretsu discloses using laws, in each jurisdiction where there is an alliance firm, to determine whether revenue is shared among the alliance firms (Reference D page 8 paragraph 1 line 5-6 & Line 8-10 & 15-16, Orton-Excite deal constitutes laws determining sharing of revenue)

Regarding Claim 16, Keiretsu discloses establishing how revenue should be shared based on criteria defined by a third party (Reference A page 47 paragraph 3 line 8-9, Keiretsu banks are prohibited by the Japanese government from holding more than 5% of any commercial firm; Reference D page 8 paragraph 1 line 5-6 & Line 8-10 & 15-16, Orton-Excite deal constitutes laws determining sharing of revenue – deal was brokered by KPCP, a third party).

Regarding Claim 17, Keiretsu discloses establishing how revenue should be shared based on criteria defined by all of the alliance firms (Reference F page 2 paragraph 2 line 12-13, teams in NBA ratified revenue sharing deal).

Regarding Claim 19, Keiretsu discloses allowing alliance firms in

the first, second and third levels to share work and to establish an acceptable revenue sharing agreement (Reference C page 53 paragraph 2 line 6-10, agreements regarding revenues and profits relating to production process improvements).

Regarding Claim 20, Keiretsu discloses allowing alliance firms in the first, second and third levels to refer clients to each other and to establish an acceptable referral agreement (Reference A page 12 paragraph 2 line 13-15, working in one keiretsu, Toyota or Nissan precludes working for or referring business to another keiretsu, in this case outside of Toyota or Nissan, respectively).

Regarding Claim 23, Keiretsu discloses:

creating an alliance between a plurality of independent firms based on predefined rules, wherein the predefined rules determine each firm's position in a multi-level business alliance (Reference A page 121 paragraph 3 line 7-9, there are usually three clearly defined levels of subcontractors in a Keiretsu);

providing each firm in the multi-level business alliance an opportunity to access the resources of other firms in the multiple-level business alliance (Reference C page 56 paragraph 1, financial and insurance services provided from within the Keiretsu);

enabling at least two firms in the multi-level business alliance to share revenue based on a predefined formula (Reference C page 53 paragraph 2 line 6-10, agreements regarding revenues and profits relating to production process improvements); and

accepting only those firms in the multi-level business alliance that provide service that is desirable to alliance firms (Reference A page 123 paragraph 1 line 14-15, in a distribution Keiretsu, the owner supplies the retail space and labor under which to market primarily products from the keiretsu).

Regarding Claim 24, Keiretsu discloses all of the limitations of the claim above, and:

requiring each firm that is not in the highest level of the multi-level business alliance to pay a licensing fee, wherein predefined rules are used to divide the licensing fee between parent firms in higher levels of the multi-level business alliance (Reference G page 5 paragraph 1, Virgin operates under Japanese Keiretsu structure – paragraph 3, brand name 'Virgin' is leased under license to each of the groups, which pay Branson a licensing fee).

Regarding Claim 25, Keiretsu discloses

creating an alliance between a plurality of independent firms based on predefined rules established by a founding firm, wherein the predefined rules determine each firms position in a multi-level business alliance (Reference A page 121 paragraph 3 line 7-9, there are usually three clearly defined levels of subcontractors in a Keiretsu);;

using the predefined rules to determine each firm in the multi-level business alliance access the resources of other firms in the multiple-level business alliance (Reference C page 56 paragraph 1, financial and insurance services provided from within the Keiretsu);

using the predefined rules to determine whether firms in the multi-level business alliance are allowed to share revenue (Reference A page 49 paragraph 3 line 1-2, Japanese companies in the keiretsu hold each other's stock; Reference D page 8 paragraph 1 line 8-10 & 14-15, keiretsu companies practice revenue sharing; Reference F page 2 paragraph 3 line 1, NBA has a Keiretsu; Reference F page 2 paragraph 1 line 5 – paragraph 2 line 12, revenue sharing in the NBA); and

accepting only those firms in the multi-level business alliance that provide service that is desirable to alliance firms (Reference A page 123 paragraph 1 line 14-15, in a distribution Keiretsu, the owner supplies the retail space and labor under which to market primarily products from the keiretsu).

Regarding Claim 26, Keiretsu discloses wherein the predefined rules allow firms in the multi-level business alliance to access the resources of the founding firm at a predefined standard rate (Reference A page 48 paragraph 1 line 5-10, manufacturing members can borrow funds from the horizontal keiretsu alliance; Reference A page 50 paragraph 3 line 6-8, banks monitor necessary information to determine rate of lending, including monitoring credit).

Regarding Claim 27, Keiretsu discloses wherein the predefined rules require firms in the multi-level business alliance to refer business to the founding firm on a predetermined basis (Reference A page 12 paragraph 2 line 13-15, working in one keiretsu, Toyota or Nissan precludes working for or referring business to another keiretsu, in this case outside of Toyota or Nissan, respectively).

Regarding Claim 28, Keiretsu discloses wherein the predefined rules require firms in the multi-level business alliance to pay a licensing fee to the founding firm (Reference G page 5 paragraph 1 & 3, Virgin Keiretsu pays licensing fee to Branson for brand name "Virgin").

Regarding Claim 30, Keiretsu discloses wherein the predefined rules allow firms in the multi-level business alliance to use a predefined logo (Reference A page 123 paragraph 1 line 9-11, retailer in distribution keiretsu displays sign, including logo, of sponsoring keiretsu, in this case National or Toshiba).

Regarding Claim 31, Keiretsu discloses wherein the predefined rules allow firms in the multi-level business alliance to participate in certain professional organizations (Reference C page 55 paragraph 2 line 7-11, members of a Hitachi group belong to Hitachi unions).

Regarding Claim 32, Keiretsu discloses wherein the predefined rules allow a firm in one profession to join an alliance of firms from at least one other profession (Reference A page 47 paragraph 1 line 2-4 & 11-12, manufacturing firms join an alliance of banks, the horizontal keiretsu prior to joining an alliance of firms within the vertical manufacturing keiretsu).

Regarding Claim 33, Keiretsu discloses wherein a firm in a first profession must join an alliance of firms from the first profession prior to joining an alliance of firms from at least one other profession (Reference A page 47 paragraph 1 line 2-4 & 11-12, manufacturing firms join the alliance of banks as a first step, this is the horizontal keiretsu prior to joining the vertical keiretsu within their own manufacturing profession; manufacturing and banking are the two professions) .

Regarding Claim 34, Keiretsu discloses wherein a firm in a first industry group must join an alliance of firms from the first industry group prior to joining an alliance of firms from at least one other industry group (Reference A page 47 paragraph 1 line 2-4 & 11-12, manufacturing firms join the alliance of banks as a first step, this is joining the horizontal keiretsu prior to joining the vertical keiretsu within their own manufacturing profession; Reference C page 43 Figure 2-2 Dai-Ichi Seimi Hoken is one of three banking groups a company would join prior to joining the Nissan automotive group).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiretsu in view of Multilevel Marketing as described in the following document: Brown, Caryne, "Door-to-Door Selling grows up", 1992, Black Enterprise, v23, n5 p76, hereafter referred to as Reference A.

Regarding Claim 18, Keiretsu teaches:

requiring each firm in the first level to pay the founding firm a licensing fee (Reference G page 5 paragraph 1, Virgin operates under Japanese Keiretsu structure – paragraph 3, brand name 'Virgin' is leased under license to each of the groups, which pay Branson a licensing fee) and wherein the firm in the first

level and the founding firm share revenue based on a predetermined formula (Reference F page 2 paragraph 3 line 1, NBA has a Keiretsu; Reference F page 2 paragraph 1 line 5 – paragraph 2 line 12, revenue sharing in the NBA; Reference C page 53 paragraph 2 line 6-10, agreements regarding revenues and profits relating to production process improvements; Reference D page 8 paragraph 1 line 5-6 & Line 8-10 & 15-16, Orton-Excite deal constitutes laws determining sharing of revenue);

Keiretsu teaches the concept of licensing fees, as discussed above, but does not teach:

requiring each firm in the second level to pay a licensing fee to a parent firm in the first level and to the founding firm,

requiring each firm in the third level to pay a licensing fee which would be payable to a parent in the second level that introduced the firm in the third level to the alliance, a parent firm in the first level that introduced the parent firm in the second level to the alliance, and the founding firm.

Multilevel Marketing teaches:

requiring each firm in the second level to pay a licensing fee to a parent firm in the first level and to the founding firm (Reference A page 2 paragraph 6 line 4-7; Multilevel Marketing teaches the concept of 'commission overrides' which essentially means that a primary entity in an organization, receives compensation directly related to the activities of those beneath that primary entity in an organization when the primary entity is responsible for recruiting, hiring or referring those entities into the organization. The motivation behind this concept

is to reward an entity for the number and value of subordinate entities the entity brings into an organization since these entities bring additional revenue to the organization.),

requiring each firm in the third level to pay a licensing fee which would be payable to a parent in the second level that introduced the firm in the third level to the alliance, a parent firm in the first level that introduced the parent firm in the second level to the alliance, and the founding firm (Reference A page 4 paragraph 5 line 8-10, senior level directors who coordinate representatives can make money on commission overrides. The concept taught here is that in a multilevel organization, commission overrides can reach more than one layer up into the organization above the entity actually bringing in the revenue)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Keiretsu, as discussed above, with Multilevel Marketing, because the modification would reward an entity for the number and value of subordinate entities the entity recruits, hires or brings into an organization in order to generate more revenue.

Regarding Claim 22, Keiretsu teaches using a company that acts as a middleman between firms in the alliance and their clients and receiving a commission or fee for providing this referral service. The commission or fee is predetermined based on the particular rules for the Sogo Shosha (Reference A page 58 paragraph 1 line 7-9). The Sogo Shosha provide referrals for companies wishing to enter into trading within Japan (Reference A page 59

paragraph 2 line 2-4, Sosha control imports and distribution to a great extent, because they are well connected within Japan).

Keiretsu does not teach allowing the founding firm to provide a service to a client of a second firm in the alliance structure and allowing the founding firm to use a predetermined formula to split a referral fee between the second firm and parent firms in higher levels of the alliance structure that introduced the second firm to the alliance.

As discussed above, referral fees are old and well known in the art. The idea is that they promote communication leading to some desirable business outcome and they reward the entity, be that a person or company, responsible for connecting two other entities leading to a desirable connection, e.g. the two other entities enter into a profitable business relationship. Multilevel Marketing, as discussed above, teaches splitting fees or commissions between various levels of the organization.

It would be obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Keiretsu, as discussed above, with Multilevel marketing, because it would because it would compensate the founding firm for establishing a brand name and goodwill in the marketplace and provide a mechanism for alliance firms to obtain the benefits of participating in a business alliance through encouraging business referrals within the alliance.

1. Claims 21 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiretsu in view of Bond's Franchise Guide as described in

the following document: web.archive.org, worldfranchising.com, "Bond's Franchising Guide", November 15, 1999, hereafter referred to as Reference A.

Regarding Claim 21, Keiretsu teaches allowing alliance firms in the first, second and third levels to refer clients to each other (The sogo shosha, Keiretsu Reference A page 54 paragraph 3 line 13-15, functions as a well connected middleman, because they have connections throughout Japanese business, including providing referrals). The Sogo Shosha provide referrals for companies wishing to enter into trading within Japan (Keiretsu Reference A page 59 paragraph 2 line 2-4, Sosha control imports and distribution to a great extent, because they are well connected within Japan).

Keiretsu does not teach establishing an acceptable referral agreement, wherein the referral agreement requires that a portion of a referral fee is paid to the founding firm.

Paying part of referral fee to a founder of an alliance of firms is a type of royalty, which is old and well known in the art as taught by Bond's Franchise Guide (Reference A page 1 paragraph 5 line 1-2, on-going royalty fees).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Keiretsu, as discussed above, with alliance firms paying the founding firm a portion of their referral fees, because it would because it would compensate the founding firm for establishing a brand name and goodwill in the marketplace and provide a mechanism for alliance firms to obtain the benefits of participating in a business alliance through encouraging business referrals within the alliance.

Regarding Claim 29, Keiretsu discloses wherein the predefined rules require firms in the multi- level business alliance to pay an annual fee to the founding firm based on a percentage of each firm in the multi-level business alliance billing. Bond teaches the concept for founding firms to receive royalties and licensing fees from companies joining the founding firm's alliance. (Reference A page 1 paragraph 5 line 1-2, on-going royalty fees). The reason for doing so is to expand the potential reach of the foundation firm beyond its own reach by enabling the subordinate alliance firm to take advantage of the founding firm's brand name and established goodwill in the marketplace to support the subordinate firm's own marketing and business efforts. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Keiretsu, as discussed above, with requiring the payment of an annual fee to the founding firm based on a percentage of each firm's billing in the multi-level business alliance, because it would compensate the founding firm for establishing a brand name and goodwill in the marketplace and provide a mechanism for alliance firms to obtain the benefits of participating in a business alliance.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ferguson, Charles H, "Computers and the Coming of the US Keiretsu", July 1990, Harvard Business Review, Reprint 90405, pp.1-16.

Dyer, Jeffrey, "How Chrysler Created an American Keiretsu", 1996, Harvard Business Review, Reprint 96403, pp. 1-11.

Cutts, Robert L., "Capitalism in Japan: Cartels and Keiretsu", 1992, Harvard Business Review, Reprint 92403, pp. 1-8.

Business Day (Thailand), "Ecommerce Firm accused of Running Pyramid Scheme", July 29, 1999, pp.1-3

Greco, Susan, "Breakthrough Marketing: the Buddy System", 1996, Inc., v18n15, p 52.

Jones, Joyce E., "The Direct Selling Revolution: Understanding the growth of Amway", 1996, The Journal of Consumer Affairs, v10n1, p. 283.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 703-305-0550. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS 2-7-2005

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